



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

February 8, 2023

Re: FOIA Request NLRB-2023-000733

Dear Perry Schussler:

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on February 3, 2023, in which you seek “all available records” in *Minnesota Historical Society*, Case No. 18-CA-294403. You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on February 3, 2023.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency’s electronic casehandling system, NxGen, I have confirmed that the requested case is an open case pending in the Agency’s Region 18 Minneapolis office. As such, I have determined that certain records responsive to your request are therefore exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Here, Case No. 18-CA-294403 is pending a hearing before an Administrative Law Judge, currently scheduled to begin on May 2, 2023, and the release of the investigative records at this time could harm or interfere with the ongoing proceeding. Therefore, given the open status of the requested case, the investigatory records in the case file are being withheld in full pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached the formal records in the case, which are available to the public pursuant to NLRB FOIA regulations, regardless of the open/closed status of the case. The formal records at this time include the charge and amended charge, the initial and amended docketing letters to the parties, a notice of appearance form for the employer, the complaint, and the answer to the complaint.

Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/18-CA-294403>.

For the purpose of assessing fees, we have placed you in Category D, the “all other requesters” category, because you do not fall within any of the other fee categories. Consistent with this fee category, you will be assessed charges to recover the reasonable direct costs for searching for the requested records, except that you will not be charged for the first two hours of search. NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(2)(ii)(D). Charges for all categories of requesters are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Less than two hours of professional time was expended in searching for the requested material. Accordingly, there is no charge assessed for this request.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (414) 930-7208 or by email at [Jodilyn.Breirather@nlrb.gov](mailto:Jodilyn.Breirather@nlrb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: FOIAPublicLiaison@nrlrb.gov  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: ogis@nara.gov  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:  
<https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop

February 8, 2023

Page 4

the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (30 pages)